

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL).

November 29, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 25, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c). This rule can be found on the Department's Web site at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing to request a Private Letter Ruling according to Illinois Administrative Code, Ch. I, Sec. 1200-110(b). We submit the following information as prescribed in the code:

- 1.) COMPANY manufactures and sells recycled asphalt in CITY, Illinois and the surrounding area. The company invested in a rotomill machine in June 2000. A rotomill is a large machine that grinds up and removes the surface of asphalt roads to prepare the road for resurfacing. Rotomilling machines create millings, which contain sand, gravel, and used asphalt of the removed pavement. The millings are used as a base for manufacturing rejuvenated hot asphalt mix, base material, or patch material, which is then sold. It is our belief that a milling machine qualifies as a piece of manufacturing machinery/equipment. We are asking for a ruling on whether a rotomill machine is considered manufacturing machinery and equipment under 86 Illinois Administrative Code 130.330.
- 2.) We do not know of any contracts, licenses, agreements, instruments or other documents relevant to this request.
- 3.) We have filed Form ST-16 for purchases unrelated to this rotomill for year 2000. We do not have an audit or litigation pending with the Department.
- 4.) To the best of our knowledge, the Department has not previously ruled on this issue, and we have not previously submitted a request for a Private Letter Ruling.
- 5.) Title 86 of Illinois Administrative Code, Section 130.330(b)(2) states that the manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal

property by procedures commonly regarded as manufacturing which changes some existing material or materials into a material with a different form, use or name.

Title 86 of Illinois Administrative Code Section 130.330(4) states that machinery and equipment will qualify for the exemption if the process results in the assembling of an article of tangible personal property with a different form, use or name than the material extracted.

- 6.) We are unable to locate an authority contrary to our view and therefore, have determined that there are no authorities contrary to our view.
- 7.) We are not including any specific trade secret information that we request be deleted from public dissemination of the ruling.

Thank you for your consideration.

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330, enclosed. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

"Manufacturing" is defined as the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, which changes some existing material or materials into a material with a different use, form, or name. These changes must result from the process in question and be substantial and significant.

Generally, the use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold will be considered to constitute an exempt use under the manufacturing machinery and equipment exemption. Hand tools do not qualify for the exemption. However, pneumatic hand tools or electric powered hand tools used primarily in manufacturing or assembling may qualify for the exemption.

If machinery or equipment purchased for use in an asphalt production operation meets these requirements, it can be purchased tax-free by giving the certification described at Section 130.330(g). However, the purchase of machinery or equipment that will be primarily used to store, convey, handle or transport materials prior to their entrance into the production cycle would be subject to tax. A machine that primarily breaks up old road surfaces and then transports the broken material to the plant prior to its entrance into the first production station where it is mixed with other materials would not be considered a manufacturing activity for the purpose of the exemption. Section 130.330(d)(4)(C).

It is also important to keep in mind the requirement that over 50% of the produced material must be for wholesale or retail sale or lease. The purchase of machinery or equipment for use in an asphalt production process would be taxable if the majority of produced asphalt were to be used by the same business to fulfill contract jobs such as the paving of roads or parking lots. This is because under Illinois law the asphalt producer would be acting as a construction contractor and would itself

be using the asphalt by converting it into real estate. See, *Illinois Valley Paving, Inc. v. Department of Revenue*, 294 Ill. App. 3d 1123 (1998); *Thomas M. Madden and Company v. Department of Revenue*, 272 Ill. App. 3d 212 (1995).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.